

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NORTH CAROLINA
 3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, - Docket No. 5:18-CR-452-FL-1
 5 Plaintiff, - New Bern, North Carolina
 6 v. - January 14, 2020
 7 LEONID ISAAKOVICH TEYF, - Motion Hearing
 8 Defendant. -

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 10 TRANSCRIPT OF MOTION HEARING
 11 BEFORE THE HONORABLE LOUISE WOOD FLANAGAN
 12 UNITED STATES DISTRICT JUDGE.

13 APPEARANCES:

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23 Proceedings recorded by mechanical stenography,
24 transcript produced by notereading.
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1 (Commenced at 1:31 p.m.)

2 (The interpreters, Marianne Duhertov and
3 Tatyana Draga, were previously sworn.)

4 THE COURT: We continue on with Mr. Teyf
00:00:05 5 present, and the government is well represented as well.

00:00:10 6 What relief are you seeking, Ms. Kocher?

00:00:12 7 MS. KOCHER: Your Honor, the government
00:00:14 8 seeks the defendant be held in contempt for his failure
00:00:17 9 to respond.

00:00:18 10 THE COURT: What's that going to look like?

00:00:20 11 MS. KOCHER: It would be the government's
00:00:21 12 request that the Court make findings that holding the
00:00:26 13 defendant in civil contempt would be of no import. We
00:00:32 14 can -- he's in custody. A hefty fine daily I don't
00:00:38 15 think would help what caused -- I think the intention is
00:00:45 16 clear to not respond to whatever order the Court would
00:00:49 17 issue in regard to holding him contempt until he
00:00:51 18 complies. So the government would request that he be
00:00:56 19 held in criminal contempt for the failure to comply and
00:00:59 20 for the representations that have been made that he will
00:01:00 21 continue to fail to comply such that an appeal can be
00:01:03 22 immediately taken.

00:01:04 23 THE COURT: What's criminal contempt going
00:01:06 24 to look like?

00:01:07 25 MS. KOCHER: The criminal contempt would be

00:01:10 1 the opportunity to be heard, as is here today, and then
00:01:12 2 a sentence at the Court's discretion.

00:01:16 3 THE COURT: Is the grand jury still in
00:01:19 4 session that he failed to respond to?

00:01:24 5 MS. KOCHER: I don't believe that that
00:01:28 6 particular grand jury is, Your Honor. But the body --
00:01:32 7 the subpoena would roll over to the next body. It
00:01:36 8 certainly is still meeting.

00:01:39 9 THE COURT: Okay. Who is going to be
00:01:43 10 speaking?

00:01:43 11 Thank you.

00:01:44 12 MR. ALLEN: Your Honor, I will at least
00:01:48 13 start, and if there's something that Mr. Wolf needs to
00:01:50 14 chime in on, I hope Your Honor will permit that.

00:01:54 15 So it is news to me that the grand jury is
00:02:00 16 not currently sitting because I think that moots this
00:02:03 17 question, if I understand what has just been said
00:02:07 18 correctly. In fact, I do not have the case here, but I
00:02:13 19 have seen a case that says that, that if the grand jury
00:02:17 20 is no longer sitting, the subpoena is moot, and this
00:02:21 21 question is moot. And so I would start there.

00:02:26 22 And if Your Honor will indulge me for a
00:02:29 23 moment, I can find a case cite on that.

00:02:32 24 THE COURT: Is that civil contempt that
00:02:34 25 you're speaking of, with "No period of confinement shall

00:02:46 1 exceed the term of the grand jury"?

00:02:55 2 MR. ALLEN: Your Honor, that is a part of
00:02:56 3 it, but I would submit that it also applies equally to
00:03:00 4 the criminal contempt because the body issuing the
00:03:03 5 subpoena is no longer sitting, at the very least. And
00:03:08 6 there may be additional language in the case; I'm
00:03:11 7 thinking about that. But I would definitely submit that
00:03:16 8 the subpoena is moot at this point, so we should instead
00:03:20 9 turn our energies to a very full plate.

00:03:25 10 THE COURT: We do have a full plate.

00:03:35 11 So the government thinks the court should
00:03:37 12 skip over civil contempt and move right to criminal
00:03:40 13 contempt?

00:03:40 14 MS. KOCHER: That is the government's
00:03:42 15 position, Your Honor.

00:04:02 16 THE COURT: Do you remember the case name?

00:04:06 17 MR. ALLEN: Your Honor, I beg your pardon.
00:04:08 18 I am digging through. I am seeing one that discusses
00:04:15 19 the least possible power adequate to end a proposed
00:04:20 20 issue should be used. But I am not finding in my stack
00:04:25 21 of cases that which I am mindful of. I'll certainly
00:04:30 22 request the opportunity to submit that, if I am
00:04:35 23 remembering it correctly, and I believe that I am.

00:04:38 24 THE COURT: All right. So if you're
00:04:39 25 remembering it correctly, and if what you say is true,

00:04:48 1 how much time does that really buy the defendant?

00:04:54 2 MR. ALLEN: Your Honor, I suppose if the
00:04:57 3 government is absolutely intent on issuing another
00:05:00 4 subpoena with a new grand jury, then we may confront
00:05:03 5 this issue again. But it would be better confronted in
00:05:07 6 that context in which there is a valid, not moot,
00:05:14 7 subpoena.

00:05:16 8 On the issue of civil versus criminal, Your
00:05:19 9 Honor, I would submit the most efficient way to proceed
00:05:22 10 would be a civil finding. He is in jail, obviously, as
00:05:27 11 we sit here. It's not where he wants to be. It would
00:05:32 12 allow him to avail himself, as I understand it from
00:05:38 13 the -- there's a case, Search of 235 Queen Street, 319
00:05:45 14 Fed. Appx. 197, I'm glad to hand up, that this is the
00:05:48 15 normal way that this is handled.

00:05:50 16 THE COURT: I'm familiar with that strain of
00:05:52 17 the law, and I've certainly come upon that myself in
00:05:57 18 doing research.

00:06:00 19 Does the government want to be heard further
00:06:03 20 on the mootness issue or any other?

00:06:05 21 MS. KOCHER: Your Honor, only with the
00:06:06 22 request, because this has just come up today, to be able
00:06:10 23 to confirm two things: first, that the grand jury is
00:06:14 24 not the same body that was present at the time the
00:06:17 25 subpoena was issued; and second, to look at the case

00:06:23 1 law, which is yet unnamed, in regard to --

00:06:28 2 THE COURT: Well, I would say you ought to
00:06:30 3 have come today with that information because it's
00:06:34 4 important to the Court's analysis, whether the grand
00:06:38 5 jury is still sitting or not.

00:06:40 6 Do you think if you just excused yourself
00:06:42 7 you could make a phone call?

00:06:44 8 MS. KOCHER: I could certainly do that, yes.

00:06:47 9 THE COURT: Why don't we, for efficiency's
00:06:49 10 sake, learn that now.

00:06:52 11 We'll stand at ease awaiting Ms. Kocher's
00:06:55 12 return.

00:12:18 13 (Discussion had off the record.)

00:12:34 14 THE COURT: So we're in a position to learn.

00:12:40 15 MS. KOCHER: I believe, Your Honor, that the
00:12:41 16 grand jury, that particular body of people, expired in
00:12:46 17 June of 2019.

00:13:00 18 THE COURT: Okay. Do you want ten days to
00:13:03 19 brief this?

00:13:05 20 MR. ALLEN: We'd be grateful, Your Honor.

00:13:07 21 THE COURT: Do you want ten days to respond
00:13:09 22 after that?

00:13:10 23 MS. KOCHER: Thank you, Your Honor.

00:13:10 24 THE COURT: Okay. Can we just talk
00:13:12 25 practically speaking? There are a lot of things on

00:13:16 1 everybody's plate. I don't see this necessary to be
00:13:20 2 decided before the trial; do you, Ms. Kocher?

00:13:31 3 MS. KOCHER: I believe that my answer would
00:13:33 4 be: It depends, Your Honor. And I am careful in my
00:13:49 5 articulation because I don't want to overspeak or have
00:13:52 6 the main purpose of that subpoena appear in any way to
00:13:57 7 be evidence for the trial. It certainly was not. Trial
00:14:01 8 was not a speck in our eye at the time that that
00:14:05 9 subpoena was issued. And I think the case law strongly
00:14:09 10 supports that it is the purpose for which the subpoena
00:14:12 11 was generated that's the issue.

00:14:15 12 We stand here now, though, Your Honor,
00:14:17 13 counting down the weeks until trial, which are not very
00:14:20 14 far away. No reciprocal discovery. And it would be the
00:14:25 15 government's position that to the extent that the
00:14:28 16 defendant will be bringing in financial records, if he
00:14:38 17 chooses to put on a defense, and that defense would
00:14:40 18 include financial records to show the preexistence of
00:14:45 19 significant sums of money, that is where my thought is
00:14:51 20 going. And I'm trying to figure out what the
00:14:55 21 government's position would be in that event if they
00:14:58 22 appear at trial when all of this time we've had -- and
00:15:04 23 are only here because of the defendant's ongoing failure
00:15:07 24 to comply. So with all of that, I don't have an answer.

00:15:13 25 MR. ALLEN: Your Honor, with that

00:15:14 1 articulation, and respectfully, it does sound very much
00:15:20 2 like it is intended for trial purposes. I don't know
00:15:23 3 how else to interpret what we just heard.

00:15:29 4 THE COURT: Reciprocal discovery in all
00:15:31 5 respects is outstanding?

00:15:36 6 MR. ALLEN: That is correct. We have not
00:15:38 7 provided any discovery. We have not yet determined
00:15:41 8 whether we intend to introduce at trial. We'll
00:15:45 9 certainly come to a moment where, as Your Honor has
00:15:46 10 discussed earlier, we need to turn those records over if
00:15:49 11 they're going to be used with foreign witnesses that we
00:15:52 12 would offer up at trial. And we understand that, and
00:15:55 13 we'll have those translated and usable in the timeframe
00:15:58 14 Your Honor has set forth.

00:16:02 15 I don't know if that addresses Your Honor's
00:16:05 16 question.

00:16:13 17 THE COURT: All right. Well, I think we've
00:16:15 18 taken it about as far as we can today. Is there
00:16:18 19 anything further from the government?

00:16:20 20 MS. KOCHER: No, Your Honor.

00:16:20 21 THE COURT: And from the defendant?

00:16:21 22 MR. ALLEN: No, Your Honor. Thank you.

00:16:22 23 THE COURT: Mr. Teyf, have you understood
00:16:25 24 everything I've said here today?

00:16:32 25 THE DEFENDANT: Yes, thank you. I've

00:16:33 1 understood everything.

00:16:34 2 THE COURT: Are you satisfied with the
00:16:36 3 interpreter services being provided to you?

00:16:43 4 THE DEFENDANT: Yes, thank you, Your Honor;
00:16:44 5 I am happy and satisfied.

00:16:46 6 THE COURT: Good. I will just tell you now,
00:16:48 7 and I will remind you, but what I have to say now goes
00:16:52 8 for every point in this proceeding through trial. If at
00:16:58 9 any point in time you do not understand something, if at
00:17:05 10 any point in time you are not satisfied with the
00:17:08 11 interpreter services being provided to you, you must let
00:17:12 12 me know. Will you do that?

00:17:19 13 THE DEFENDANT: Yes, definitely, Your Honor.

00:17:21 14 THE COURT: Very good. Thank you.

15 (Concluded at 1:49 p.m.)

16 - - -

17

18 C E R T I F I C A T E

19

20 I certify that the foregoing is a correct transcript
21 from the record of proceedings in the above-entitled
22 matter.

23

24 /s/ Tracy L. McGurk_____

1/15/2020

25 Tracy L. McGurk, RMR, CRR

Date

/	A	Commenced [1] - 3:1 complies [1] - 3:18 comply [3] - 3:19, 3:21, 8:24	Draga [2] - 1:24, 3:3 Duhertov [2] - 1:23, 3:2
/s [1] - 10:24	able [1] - 6:22 above-entitled [1] - 10:21	Concluded [1] - 10:15 confinement [1] - 4:25	E
1	absolutely [1] - 6:3 additional [1] - 5:6 addresses [1] - 9:15 adequate [1] - 5:19 Allen [1] - 1:17 ALLEN [8] - 4:12, 5:2, 5:17, 6:2, 7:20, 8:25, 9:6, 9:22 allow [1] - 6:12 AMERICA [1] - 1:4 analysis [1] - 7:4 answer [2] - 8:3, 8:24 appeal [1] - 3:21 appear [2] - 8:6, 8:22 APPEARANCES [1] - 1:11 applies [1] - 5:3 Appx [1] - 6:14 articulation [2] - 8:5, 9:1 Attorneys' [1] - 1:12 avail [1] - 6:12 Avenue [2] - 1:14, 1:21 awaiting [1] - 7:11	confirm [1] - 6:23 confront [1] - 6:4 confronted [1] - 6:5 contempt [10] - 3:8, 3:13, 3:17, 3:19, 3:23, 3:25, 4:24, 5:4, 5:12, 5:13 context [1] - 6:6 continue [2] - 3:4, 3:21 correct [2] - 9:6, 10:20 correctly [3] - 4:18, 5:23, 5:25 counting [1] - 8:13 Court [3] - 2:1, 3:12, 3:16 COURT [24] - 1:1, 3:4, 3:10, 3:23, 4:3, 4:9, 4:24, 5:10, 5:16, 5:24, 6:16, 7:2, 7:9, 7:14, 7:18, 7:21, 7:24, 9:4, 9:17, 9:21, 9:23, 10:2, 10:6, 10:14 court [1] - 5:11 Court's [2] - 4:2, 7:4 criminal [6] - 3:19, 3:23, 3:25, 5:4, 5:12, 6:8 CRR [2] - 2:1, 10:25 custody [1] - 3:14	ease [1] - 7:11 EASTERN [1] - 1:1 efficiency's [1] - 7:9 efficient [1] - 6:9 end [1] - 5:19 energies [1] - 5:9 entitled [1] - 10:21 equally [1] - 5:3 event [1] - 8:21 evidence [1] - 8:7 exceed [1] - 5:1 excused [1] - 7:6 expired [1] - 7:16 extent [1] - 8:15 eye [1] - 8:8
2			
2019 [1] - 7:17 2020 [1] - 1:5 212 [1] - 1:22 235 [1] - 6:13 27601 [2] - 1:15, 1:18 28560 [1] - 2:2			
3	B		F
310 [1] - 1:14 319 [1] - 6:13 392-6626 [1] - 2:2	Barbara [1] - 1:13 BEFORE [1] - 1:10 beg [1] - 5:17 Bern [3] - 1:5, 1:14, 2:2 better [1] - 6:5 body [5] - 4:6, 4:7, 5:4, 6:24, 7:16 brief [1] - 7:19 bringing [1] - 8:16 buy [1] - 6:1		fact [1] - 4:18 fail [1] - 3:21 failed [1] - 4:4 failure [3] - 3:8, 3:19, 8:23 familiar [1] - 6:16 far [2] - 8:14, 9:18 Fayetteville [1] - 1:17 Fed [1] - 6:14 figure [1] - 8:20 financial [2] - 8:16, 8:18 findings [1] - 3:12 fine [1] - 3:14 first [1] - 6:23 FLANAGAN [1] - 1:10 Floor [1] - 1:21 foregoing [1] - 10:20 foreign [1] - 9:11 forth [1] - 9:14 full [2] - 5:9, 5:10
4		D	
405 [1] - 1:21 413 [1] - 2:1 419 [1] - 2:2		daily [1] - 3:14 Date [1] - 10:25 days [2] - 7:18, 7:21 decided [1] - 8:2 DEFENDANT [3] - 9:25, 10:4, 10:13 defendant [5] - 3:8, 3:13, 6:1, 8:16, 9:21 Defendant [2] - 1:8, 1:16 defendant's [1] - 8:23 defense [2] - 8:17 definitely [2] - 5:7, 10:13 determined [1] - 9:7 digging [1] - 5:18 discovery [3] - 8:14, 9:4, 9:7 discretion [1] - 4:2 discussed [1] - 9:10 discusses [1] - 5:18 Discussion [1] - 7:13 DISTRICT [3] - 1:1, 1:1, 1:10 DIVISION [1] - 1:2 Docket [1] - 1:4 down [1] - 8:13	
5	C		
554-7825 [1] - 1:22 5:18-CR-452-FL-1 [1] - 1:4	careful [1] - 8:4 CAROLINA [1] - 1:1 Carolina [1] - 1:5 case [8] - 4:18, 4:19, 4:23, 5:6, 5:16, 6:13, 6:25, 8:9 cases [1] - 5:21 caused [1] - 3:15 certainly [6] - 4:8, 5:21, 6:17, 7:8, 8:7, 9:9 certify [1] - 10:20 chime [1] - 4:14 chooses [1] - 8:17 cite [1] - 4:23 civil [5] - 3:13, 4:24, 5:12, 6:8, 6:10 clear [1] - 3:16		
8			G
800 [1] - 1:14 821-4711 [1] - 1:19 856-4500 [1] - 1:15			generated [1] - 8:11 glad [1] - 6:14 government [7] - 3:5, 3:7, 3:18, 5:11, 6:3, 6:19, 9:19 government's [4] - 3:11, 5:14, 8:15, 8:21 grand [9] - 4:3, 4:6, 4:15, 4:19, 5:1, 6:4, 6:23, 7:4, 7:16 grateful [1] - 7:20
9			
919 [2] - 1:15, 1:19			

H	7:16	needs [1] - 4:13 new [1] - 6:4 New [4] - 1:5, 1:14, 1:22, 2:2 news [1] - 4:15 next [1] - 4:7 normal [1] - 6:15 NORTH [1] - 1:1 North [1] - 1:5 notereading [1] - 2:23 NY [1] - 1:22	purposes [1] - 9:2 put [1] - 8:17
hand [1] - 6:14 handled [1] - 6:15 happy [1] - 10:5 heard [3] - 4:1, 6:19, 9:3 Hearing [1] - 1:6 HEARING [1] - 1:9 hefty [1] - 3:14 held [2] - 3:8, 3:19 help [1] - 3:15 Hill [1] - 1:17 himself [1] - 6:12 holding [2] - 3:12, 3:17 Honor [23] - 3:7, 4:6, 4:12, 4:14, 4:22, 5:2, 5:15, 5:17, 6:2, 6:9, 6:21, 7:15, 7:20, 7:23, 8:4, 8:12, 8:25, 9:9, 9:14, 9:20, 9:22, 10:4, 10:13 Honor's [1] - 9:15 HONORABLE [1] - 1:10 hope [1] - 4:14	K	Kellhofer [1] - 1:13 KOCHER [11] - 3:7, 3:11, 3:25, 4:5, 5:14, 6:21, 7:8, 7:15, 7:23, 8:3, 9:20 Kocher [3] - 1:13, 3:6, 8:2 Kocher's [1] - 7:11	Q
	L		Queen [1] - 6:13
	language [1] - 5:6 law [3] - 6:17, 7:1, 8:9 learn [2] - 7:10, 7:14 least [3] - 4:12, 5:5, 5:19 LEONID [1] - 1:7 Lexington [1] - 1:21 look [3] - 3:10, 3:24, 6:25 LOUISE [1] - 1:10	O	R
I	M	obviously [1] - 6:10 OF [3] - 1:1, 1:4, 1:9 offer [1] - 9:12 Office [1] - 1:12 one [1] - 5:18 ongoing [1] - 8:23 opportunity [2] - 4:1, 5:22 order [1] - 3:16 ought [1] - 7:2 outstanding [1] - 9:5 overspeak [1] - 8:5	Raleigh [2] - 1:15, 1:18 really [1] - 6:1 reciprocal [2] - 8:14, 9:4 record [2] - 7:13, 10:21 recorded [1] - 2:23 records [3] - 8:16, 8:18, 9:10 regard [2] - 3:17, 7:1 relief [1] - 3:6 remember [1] - 5:16 remembering [2] - 5:23, 5:25 remind [1] - 10:7 Reporter [1] - 2:1 representations [1] - 3:20 represented [1] - 3:5 request [4] - 3:12, 3:18, 5:22, 6:22 research [1] - 6:18 respectfully [1] - 9:1 respects [1] - 9:5 respond [4] - 3:9, 3:16, 4:4, 7:21 return [1] - 7:12 RMR [2] - 2:1, 10:25 Robert [1] - 1:20 roll [1] - 4:7
immediately [1] - 3:22 import [1] - 3:13 important [1] - 7:4 include [1] - 8:18 indulge [1] - 4:22 information [1] - 7:3 instead [1] - 5:8 intend [1] - 9:8 intended [1] - 9:2 intent [1] - 6:3 intention [1] - 3:15 interpret [1] - 9:3 interpreter [2] - 10:3, 10:11 Interpreters [1] - 1:23 interpreters [1] - 3:2 introduce [1] - 9:8 ISAAKOVICH [1] - 1:7 issue [6] - 3:17, 5:20, 6:5, 6:8, 6:20, 8:11 issued [2] - 6:25, 8:9 issuing [2] - 5:4, 6:3 IV [1] - 1:17	main [1] - 8:6 Marianne [2] - 1:23, 3:2 matter [1] - 10:22 McGurk [3] - 2:1, 10:24, 10:25 mechanical [1] - 2:23 meeting [1] - 4:8 Middle [1] - 2:1 mindful [1] - 5:21 moment [2] - 4:23, 9:9 money [1] - 8:19 moot [4] - 4:20, 4:21, 5:8, 6:6 mootness [1] - 6:20 moots [1] - 4:16 Moses [1] - 1:20 most [1] - 6:9 Motion [1] - 1:6 MOTION [1] - 1:9 move [1] - 5:12 MR [8] - 4:12, 5:2, 5:17, 6:2, 7:20, 8:25, 9:6, 9:22 MS [11] - 3:7, 3:11, 3:25, 4:5, 5:14, 6:21, 7:8, 7:15, 7:23, 8:3, 9:20 must [1] - 10:11	P	S
J	N	p.m [2] - 3:1, 10:15 pardon [1] - 5:17 part [1] - 5:2 particular [2] - 4:6, 7:16 people [1] - 7:16 period [1] - 4:25 permit [1] - 4:14 phone [1] - 7:7 Plaintiff [1] - 1:5 Plaintiffs [1] - 1:12 plate [3] - 5:9, 5:10, 8:1 point [4] - 5:8, 10:8, 10:9, 10:10 position [4] - 5:15, 7:14, 8:15, 8:21 possible [1] - 5:19 power [1] - 5:19 practically [1] - 7:25 preexistence [1] - 8:18 present [2] - 3:5, 6:24 previously [1] - 3:3 proceed [1] - 6:9 proceeding [1] - 10:8 Proceedings [1] - 2:23 proceedings [1] - 10:21 produced [1] - 2:23 proposed [1] - 5:19 provided [3] - 9:7, 10:3, 10:11 purpose [2] - 8:6, 8:10	sake [1] - 7:10 satisfied [3] - 10:2, 10:5, 10:10 Search [1] - 6:13 second [1] - 6:25 see [1] - 8:1 seeing [1] - 5:18 seeking [1] - 3:6 seeks [1] - 3:8 sentence [1] - 4:2 services [2] - 10:3, 10:11 session [1] - 4:4 set [1] - 9:14 shall [1] - 4:25 show [1] - 8:18 significant [1] - 8:19 Singer [1] - 1:20 sit [1] - 6:11
jail [1] - 6:10 January [1] - 1:5 Jason [1] - 1:13 JUDGE [1] - 1:10 June [1] - 7:17 jury [9] - 4:3, 4:6, 4:15, 4:19, 5:1, 6:4, 6:23, 7:5,	name [1] - 5:16 NC [3] - 1:15, 1:18, 2:2 necessary [1] - 8:1 need [1] - 9:10		

<p>sitting [4] - 4:16, 4:20, 5:5, 7:5</p> <p>skip [1] - 5:12</p> <p>Smith [1] - 1:16</p> <p>sound [1] - 9:1</p> <p>speaking [3] - 4:10, 4:25, 7:25</p> <p>speck [1] - 8:8</p> <p>St [1] - 2:1</p> <p>stack [1] - 5:20</p> <p>stand [2] - 7:11, 8:12</p> <p>start [2] - 4:13, 4:21</p> <p>STATES [3] - 1:1, 1:4, 1:10</p> <p>States [1] - 1:12</p> <p>stenography [1] - 2:23</p> <p>still [3] - 4:3, 4:8, 7:5</p> <p>strain [1] - 6:16</p> <p>Street [2] - 1:17, 6:13</p> <p>strongly [1] - 8:9</p> <p>submit [4] - 5:3, 5:7, 5:22, 6:9</p> <p>subpoena [10] - 4:7, 4:20, 5:5, 5:8, 6:4, 6:7, 6:25, 8:6, 8:9, 8:10</p> <p>Suite [2] - 1:14, 1:18</p> <p>sums [1] - 8:19</p> <p>supports [1] - 8:10</p> <p>suppose [1] - 6:2</p> <p>sworn [1] - 3:3</p>	<p style="text-align: center;">U</p> <p>understood [2] - 9:23, 10:1</p> <p>UNITED [3] - 1:1, 1:4, 1:10</p> <p>United [1] - 1:12</p> <p>unnamed [1] - 7:1</p> <p>up [3] - 6:14, 6:22, 9:12</p> <p>usable [1] - 9:13</p> <p style="text-align: center;">V</p> <p>valid [1] - 6:6</p> <p>versus [1] - 6:8</p> <p style="text-align: center;">W</p> <p>wants [1] - 6:11</p> <p>weeks [1] - 8:13</p> <p>WESTERN [1] - 1:2</p> <p>witnesses [1] - 9:11</p> <p>Wolf [1] - 1:20</p> <p>wolf [1] - 4:13</p> <p>WOOD [1] - 1:10</p> <p style="text-align: center;">Y</p> <p>York [1] - 1:22</p> <p>yourself [1] - 7:6</p>
<p style="text-align: center;">T</p> <p>Tatyana [2] - 1:24, 3:3</p> <p>ten [2] - 7:18, 7:21</p> <p>term [1] - 5:1</p> <p>Teyf [2] - 3:4, 9:23</p> <p>TEYF [1] - 1:7</p> <p>Tharrington [1] - 1:16</p> <p>THE [27] - 1:10, 3:4, 3:10, 3:23, 4:3, 4:9, 4:24, 5:10, 5:16, 5:24, 6:16, 7:2, 7:9, 7:14, 7:18, 7:21, 7:24, 9:4, 9:17, 9:21, 9:23, 9:25, 10:2, 10:4, 10:6, 10:13, 10:14</p> <p>thinking [1] - 5:7</p> <p>thinks [1] - 5:11</p> <p>timeframe [1] - 9:13</p> <p>today [5] - 4:1, 6:22, 7:3, 9:18, 9:24</p> <p>Tracy [3] - 2:1, 10:24, 10:25</p> <p>TRANSCRIPT [1] - 1:9</p> <p>transcript [2] - 2:23, 10:20</p> <p>translated [1] - 9:13</p> <p>trial [9] - 8:2, 8:7, 8:13, 8:22, 9:2, 9:8, 9:12, 10:8</p> <p>true [1] - 5:25</p> <p>trying [1] - 8:20</p> <p>turn [2] - 5:9, 9:10</p> <p>two [1] - 6:23</p>	